

Use of Public Art Funds

Like many cities, Brentwood requires public and private developers to include public art in their projects. The California Supreme Court noted nearly thirty years ago that “[t]he requirement of providing art in an area of the project reasonably accessible to the public is, like other design and landscaping requirements, a kind of aesthetic control well within the authority of the city to impose.”¹

Brentwood’s public art ordinance defines “public art” as “artwork that is visually and physically accessible to the public and may include performing, musical, visual, cultural, physical, permanent, or temporary works.” ([BMC § 2.60.060.](#)) It states that:

In the commissioning and approval of public art projects, through the establishment of a city public art collection, and/or in the establishment of a city art gallery, the public art should be in harmony with the city's heritage, vision, and/or opportunity. Public art should strive to say "this is Brentwood.”

([BMC § 2.60.020\(B\).](#)) Thus, with specified exemptions, all residential subdivisions and any project consisting of more than four lots or units of any nature must make provision for public artwork. In addition, projects within the City capital improvement program such as bridges, viaducts, elevated ways, gates and other structures owned by the city (and within the city) are likewise subject to the requirement. ([BMC § 2.60.030\(B\).](#))

This mandate to provide public art can be satisfied by either:

1. acquiring and installing artwork in public places² on or near the project site, as approved by the City Council. In that case, the cost or value of the art should be as per resolution of the City Council, or
2. paying an in-lieu contribution for acquiring and installing an artwork project by contributing to the City municipal art fund as per resolution of the City Council. ([BMC § 2.60.030\(A\).](#))

On September 12, 2023, the Council adopted [Resolution No. 2023-113](#), adopting the FY 23/24 Cost Allocation Plan, which included the following public art fees:

Fee Description	Fee
Public Developments	1% of construction costs
Residential Developments	4/10ths of 1% of project valuation as set forth in the City's building permit

¹ [Ehrlich v. City of Culver City](#) (1996) 12 Cal.4th 854, 886.

² “Public places’ means all city-owned spaces, indoors and outdoors, which are generally accessible to the public.” ([BMC § 2.60.060.](#))

Fee Description	Fee
Public/Residential Developments	Remodeling, repair or reconstruction with a project valuation over \$250,000. 4/10ths of 1% of project valuation
In-Lieu Contribution	125% of approved fee

The use of these public art funds is addressed at [BMC § 2.60.040](#), which provides, in relevant part:

All funds appropriated for public art shall be deposited into a public art fund. The city council shall authorize projects for funding as prescribed in the public art program guidelines. In circumstances where it is not feasible to incorporate artistic features into a particular project, such money appropriated may be pooled and used for art in other projects. Disbursement of such funds shall be made in connection with projects approved by the city council.

The [Public Art Program Guidelines](#) (the "Guidelines") speaks to the use of public art funds, providing that:

All funds appropriated for public art shall be deposited into the public art program funds. The City Council shall authorize projects for funding as prescribed in the public art guidelines. In circumstances where it is not feasible to incorporate artistic features into a particular project, such money appropriate may be pooled and used for art in other projects. Disbursement of such funds shall be made in connection with projects approved by the City Council. Nothing herein prohibits the Commission or City from soliciting or receiving grants, donations, bequests or gifts from private or public sources from depositing monies received in the public art fund to be expended in a manner consistent with the public art guidelines.

The Guidelines also includes lists of both eligible and ineligible artworks that may be funded from public art funds. As relevant to the question of whether such funds could be used for a given project, Section VI of the Guidelines includes the following provisions:

Eligible Artworks

Design work provided by the artists, including but not limited to:

- Interior or exterior surfaces, fixtures and functional elements.
- Outdoor space design elements in areas such as plazas, arcades and pedestrian passageways.

- Artistic design of roadways, parkways, pedestrian or bicycle paths ways, transit system improvements, water and watershed facilities, solid waste transfer stations and sites with historic, archeological, and unique geological features.

Elements such as sound-walls, utility structures, roadway elements and other items designed by an artist or design team that includes artists.

Ineligible Artworks

Decorative, ornamental or functional elements or architecture except where these elements are designed by the artist and/or are an integral part of the artwork by the artist or are the results of collaboration among design professionals, including at least one artist.

Landscape architecture and landscape gardening except where these elements are designed by the artist and/or are an integral part of the artwork by the artist or are the result of collaboration among design professionals, including an artist.

Services or utilities necessary to operate or maintain the artwork in perpetuity.

A common theme amongst all of the eligible artworks is the participation of an artist as an integral partner in the work's creation. From a legal perspective, whether or not such funds could be used for a certain project turns on which aspects of the project the Council would want to fund in this way. An array of project features could conceivably fit within the "eligible artworks" listed, including design work, discrete elements designed by artists, and outdoor space design elements, provided an artist was engaged in the work. This might include murals, artist-designed plazas or piazzas, mosaics, sculpture, or artist-designed elements of other amphitheater features. "Architecture," however, is listed as ineligible, unless it meets specified exceptions, and therefore buildings or structures would likely be difficult to categorize as eligible, without those exceptions applying.

In terms of process, the Arts Commission is vested with the authority to make recommendations to the City Council as to the approval or the purchase or placement of public art, per [BMC § 2.60.050\(B\)](#). Given this, the proposal to employ public arts funds would be taken to the Arts Commission for their consideration and recommendation prior to the approval, purchase, or placement of any public art.